

United States Patent and Trademark Office



FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/22/2000	Robin Callan	100070.402	1934	
7590 05/25/2005		EXAMINER		
Seed Intellectual Property Law Group PLLC		BIANCO, PATRICIA		
ne.		ART UNIT	PAPER NUMBER	
8104-7092		3762		
	09/22/2000 00 05/25/2005 al Property Law Grou	09/22/2000 Robin Callan 00 05/25/2005 al Property Law Group PLLC	09/22/2000 Robin Callan 100070.402 00 05/25/2005 EXAM al Property Law Group PLLC BIANCO, I e ART UNIT	

DATE MAILED: 05/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

M

Advisory Action Before the Filing of an Appeal Brief

Application No.	Applicant(s)	
09/667,489	CALLAN ET AL.	
Examiner	Art Unit	
Patricia M Bianco	3762	

Patricia M Blanco The MAILING DATE of this communication appears on the cover sheet with the correspondence address → THE REPLY FILED 09 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following regiles: (1) an amendment, affidux, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 4.1.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 4.1.34; be filed within one of the following time periods: The period for reply expires on: (1) the mailing date of the final rejection. The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SM MONTHS from the mailing date of the final rejection. MONTHS OF THE FINAL RELECTION. See MEPT 705.07(1). ONLY CHECK 60X (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL RELECTION. See MEPT 705.07(1). ONLY CHECK 60X (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MEPT 705.07(1). The date on which the period with the period within the appropriate devices in the appropriate devices in the particular date. The appropriate devices in the period was filed on the appropriate devices in the period of the date of the period of the date of the period of the date of the period are applicated from: (1) the accident of the period for reply virginal set in the final rejection, even if timely filed, may reduce any set in the period date of the set of the major date of the final rejection, even if timely filed, may reduce any location of the period set of the major date of the final rejection, even if timely filed, may reduce any location of the date of filing a papeal brief. The	Before the Filling of all Appear Brief	Examiner	Art Unit				
THE REPLY FILED 09 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. The reply was filed after a final rejection, but prior to filing a botice of Appeal to a void shandoment of this application, applicant must timely file one of the following replies: (1) an amendment, afficiavit, or other evidence, which places the application in continued Examination (RCE) in compliance with 37 CFR 1.131, or (3) a form of the following replies: (1) an amendment, afficiavit, or other evidence, which places the application in continued Examination (RCE) in compliance with 37 CFR 1.131. The reply must be filed within one of the following fine periods: The period for reply sopies		Patricia M Bianco	3762				
THE REPLY FILED 09 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. The reply was filed after a final rejection, but prior to filing a botice of Appeal to a void shandoment of this application, applicant must timely file one of the following replies: (1) an amendment, afficiavit, or other evidence, which places the application in continued Examination (RCE) in compliance with 37 CFR 1.131, or (3) a form of the following replies: (1) an amendment, afficiavit, or other evidence, which places the application in continued Examination (RCE) in compliance with 37 CFR 1.131. The reply must be filed within one of the following fine periods: The period for reply sopies	The MAILING DATE of this communication appe	ars on the cover sheet with the c	correspondence add	ress			
months from the mailing date of the final rejection. The period for reply expires	HE REPLY FILED 09 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a						
Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have because and the propriate are strongly and provided by the Office later than three months after the malling date of the final ejection, even if timely filed, may reduce any samed patient term adjustment. See 37 CFR 1.704(b). 2. The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal and for a filed after the Notice of Appeal and for a filed after the Notice of Appeal and for a filed after a final rejection, but prior to the date of filing an appeal brief. The Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). 3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) They raise new issues that would require further consideration and/or search (see NOTE below); (b) They raise the issue of new matter (see NOTE below); (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal, and/or (d) The proposed amendment are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. Applicant's reply has overcome the following rejection(s): Note: See Confinution Sheet, (See 37 CFR 1.116 and 41.33(a)). A the amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). Note: See Applicant's reply has overcome the following rejection(s): Note: See Applicant's reply has overcome the following rejection(s	time periods: a) The period for reply expiresmonths from the mailing date of the final rejection. b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO						
 2. ∑ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on 09 May 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). 3. ∑ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) ∑ They raise new issues that would require further consideration and/or search (see NOTE below); (b) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims. NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)). 4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. ☐ Applicant's reply has overcome the following rejection(s):	Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).						
(a) They raise new issues that would require further consideration and/or search (see NOTE below); (b) They raise the issue of new matter (see NOTE below); (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) They present additional claims without canceling a corresponding number of finally rejected claims. NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)). 1. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 2. Applicant's reply has overcome the following rejection(s): 3. Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). 7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) erjected 35-40. Claim(s) withdrawn from consideration: 5 and 7-9. AEFIDAVIT OR OTHER EVIDENCE 8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a prief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER 11. T	The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on <u>09 May 2005</u> . A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).						
appeal; and/or (d)	3. ☑ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because (a) ☑ They raise new issues that would require further consideration and/or search (see NOTE below);						
NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)). 4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. Applicant's reply has overcome the following rejection(s): 5. Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). 7. For purposes of appeal, the proposed amendment(s): a) Will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed:	(c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or						
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. ☐ Applicant's reply has overcome the following rejection(s):			•				
the non-allowable claim(s). For purposes of appeal, the proposed amendment(s): a) \(\) will not be entered, or b) \(\) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) objected to: Claim(s) ejected: 36-40. Claim(s) withdrawn from consideration: 5 and 7-9. AFFIDAVIT OR OTHER EVIDENCE 8. \(\) The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. \(\) The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. \(\) The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER 11. \(\) The request for reconsideration has been considered but does NOT place the application in condition for allowance because: 12. \(\) Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \(\) PATRICIA BIANCO PRIMARY EXAMINER Patricia M Bianco Primary Examiner Art Unit: 3762	4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).						
how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) objected to: Claim(s) rejected: 36-40. Claim(s) withdrawn from consideration: 5 and 7-9. AFFIDAVIT OR OTHER EVIDENCE B. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: PATRICIA BIANCO PRIMARY EXAMINER Patricia M Bianco Primary Examiner Art Unit: 3762	the non-allowable claim(s).						
Claim(s) withdrawn from consideration: 5 and 7-9. AFFIDAVIT OR OTHER EVIDENCE 8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 13. Other: PATRICA BIANCO PRIMARY EXAMINER Patricia M Bianco Primary Examiner Art Unit: 3762	how the new or amended claims would be rejected is pro The status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) objected to:) ⊠ will not be entered, or b) □ wovided below or appended.	vill be entered and an	explanation of			
The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER The request for reconsideration has been considered but does NOT place the application in condition for allowance because: Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). PATRICIA BIANCO PRIMARY EXAMINER Art Unit: 3762	Claim(s) withdrawn from consideration: <u>5 and 7-9</u> .						
entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 13. Other: PATRICIA BIANCO Primary Examiner Art Unit: 3762	B. The affidavit or other evidence filed after a final action, because applicant failed to provide a showing of good a and was not earlier presented. See 37 CFR 1.116(e).	nd sufficient reasons why the affida	vit or other evidence	is necessary			
REQUEST FOR RECONSIDERATION/OTHER 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 13. Other: PATRICIA BIANCO PRIMARY EXAMINER Art Unit: 3762	entered because the affidavit or other evidence failed to showing a good and sufficient reasons why it is necessary	overcome <u>all</u> rejections under appe ry and was not earlier presented.	eal and/or appellant fa See 37 CFR 41.33(d)	ails to provide a (1).			
12. Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 13. Other: PATRICIA BIANCO PRIMARY EXAMINER Art Unit: 3762		on of the status of the claims after	entry is below or atta	cned.			
PATRICIA BIANCO PRIMARY EXAMINER Patricia M Bianco Primary Examiner Art Unit: 3762	11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:						
Primary Examiner Art Unit: 3762							
			Primary Examiner Art Unit: 3762				
S. Patent and Trademark Office	S. Patent and Trademark Office		5128105				

Continuation of 3. NOTE: First, applicant has amended claim 36 in a manner that changes the scope of the invention as well as requires new consideration & search. Second, applicant argues that claim 1 was amended to put the claims in better condition for appeal. However, claim 1 is not pending, it has been cancelled in a previous amendment.